

Message Text

PAGE 01 STATE 230234

14

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----- 045177

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FM SECSTATE WASHDC

TO AMEMBASSY BUCHAREST

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E.O. 11652: N/A

TAGS: ESTC, RO

SUBJECT: U.S.-ROMANIAN LONG-TERM ECONOMIC COOPERATION
AGREEMENT

REF: A) STATE 185830; B) BUCHAREST 4610

1. IT IS APPARENT THAT THE ROMANIANS HAVE MISSED KEY
POINTS REGARDING OUR POSITION ON MFN TREATMENT FOR PRODUCT
RESULTING FROM COOPERATION ARRANGEMENTS AND THE EXPEDITION
GRANTING OF EXPORT LICENSES. REQUEST EMBASSY REPLY TO THE
ROMANIAN COUNTERPROPOSALS (BUCH 4610) ALONG THE FOLLOWING
LINES.

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PAGE 02 STATE 230234

2. ARTICLE I (3) - WE ARE UNABLE TO ACCEPT ROMANIAN CHANGE
IN THE FIRST SENTENCE. USE OF TERM QUOTE FROM OTHER COUN-
TRIES UNQUOTE, WHILE IMPRECISE, CAN BE INTERPRETED AS
EXTENDING MFN TREATMENT TO PRODUCTS RESULTING FROM COOPER-

TION AGREEMENTS FOR TEN-YEAR TERM OF THE AGREEMENT.

3. AFTER EXAMINING SEVERAL ALTERNATIVES, WE BELIEVE WE HAVE ARRIVED AT A CLEAR, CRISP COUNTER-PROPOSAL WHICH MEET ROMANIAN OBJECTIONS (BUCH 4610) INCLUDING THE PROBLEM OF TREATMENT OF GOODS WHICH MAY BE PRODUCED UNDER FUTURE COOPERATION ARRANGEMENTS BUT WHICH ARE NOT CURRENTLY BEING PRODUCED: QUOTE GOODS PRODUCED UNDER COOPERATION ARRANGEMENTS IN THE TERRITORY OF ONE PARTY SHALL, WHEN IMPORTED INTO THE TERRITORY OF THE OTHER PARTY, BE TREATED IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF THE AGREEMENT ON TRADE RELATIONS OF APRIL 2, 1975, FOR THE PERIOD THOSE PROVISIONS REMAIN APPLICABLE, OR AS OTHERWISE PROVIDED BY APPLICABLE LAWS AND REGULATIONS. SUCH TREATMENT SHALL IN NO CASE BE LESS FAVORABLE THAN THAT ACCORDED TO OTHER LIKE GOODS PRODUCED THERE. UNQUOTE.

4. THIS LANGUAGE SEEMS TO MEET ROMANIAN OBJECTIONS AND AVOIDS SOME OF THE OBSCURITY OF PREVIOUS FORMULATIONS WHICH MAY HAVE GIVEN RISE TO THESE OBJECTIONS. IT ALSO OFFERS THE ROMANIANS A STRAIGHTFORWARD, BUT STILL APPROPRIATELY HEDGED REFERENCE TO TREATMENT OF IMPORTS PRODUCED UNDER COOPERATION ARRANGEMENTS, BUT DOES NOT AFFECT THE SUBSTANCE OF PREVIOUS U.S. PROPOSALS.

5. WE ARE NOT COMPLETELY CLEAR AS TO CURRENT ROMANIAN THINKING, AND ACCORDINGLY ARE CONCERNED THAT (A) THE ROMANIANS MAY MISTAKE THIS LANGUAGE AS A SIGNAL THAT WE MIGHT BE WILLING TO GO BEYOND THE LIMITS WE HAVE ALREADY STATED AND THAT, IN FACT, WE ARE OPENING I (3) TO NEGOTIATION ON A BROADER BASIS, OR (B) THAT WE ARE BEING LESS FORT COMING THAN PREVIOUSLY. NEITHER IS INTENDED. WE ARE AWARE OF THE LONG AND SOMETIMES PAINFUL PROCESS BY WHICH EMBASSY AND NEGOTIATING TEAM ARRIVED AT LANGUAGE IN PARA 2 STATE 185830 AND WE DO NOT WISH TO UNDERCUT THAT EFFORT BY

PROPOSING NEW FORMULATION. WE LEAVE IT TO EMBASSY DISCRE-
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PAGE 03 STATE 230234

TION TO USE NEW FORMULATION; GIVEN ABOVE OR USE PARA 2
STATE 185830 LANGUAGE, MODIFIED PER SCISSORS SUGGESTION:

6. QUOTE EACH PARTY SHALL ACCORD TO IMPORTS OF ALL GOODS PRODUCED UNDER COOPERATION ARRANGEMENTS IN THE TERRITORY OF THE OTHER PARTY THE SAME TREATMENT AS IMPORTS OF OTHER LIKE GOODS PRODUCED THERE. SUCH EQUIVALENT TREATMENT SHALL BE ACCORDED WITH RESPECT TO GOODS NOT PRODUCED IN THE TERRITORY OF THE OTHER PARTY AT THE DATE OF THE SIGNING OF THIS AGREEMENT, BUT WHICH MAY BE PRODUCED THERE DURING THE TERM OF THIS AGREEMENT. THIS TREATMENT SHALL BE THAT PROVIDED IN THE RELEVANT PROVISIONS OF THE AGREEMENT ON TRADE

RELATIONS OF APRIL 2, 1975, FOR THE PERIOD THEY REMAIN APPLICABLE; OR AS OTHERWISE PROVIDED BY APPLICABLE LAWS AND REGULATIONS. UNQUOTE.

7. IN EITHER CASE WE HOPE EMBASSY WILL MAKE CLEAR TO ROMANIA THAT AN UNQUALIFIED PROVISION OF OR REFERENCE TO MFN OR PREFERENTIAL TREATMENT FOR GOODS RESULTING FROM COOPERATION ACTIVITIES CANNOT, UNDER ANY CIRCUMSTANCE,

BE INCLUDED IN THIS AGREEMENT AND THAT WE DO NOT INTEND TO EXPAND ARTICLE I (3) BEYOND ITS PRESENT SCOPE.

8. ARTICLE II (3) - FIRST SENTENCE OF ROMANIAN COUNTER-PROPOSAL CARRIES THE INCORRECT IMPLICATION THAT ALL IMPORTS INTO ROMANIA UNDER COOPERATION ARRANGEMENTS WOULD REQUIRE VALIDATED EXPORT LICENSES. OUR INTENT IS TO SHOW SUPPORT FOR COOPERATION ARRANGEMENTS IN GENERAL AND AVOID FOCUSING UPON COOPERATION ARRANGEMENTS INVOLVING IMPORTS OF CONTROLLED ITEMS. WE, THEREFORE, FEEL THAT WE SHOULD STICK WITH LANGUAGE OF THIS FIRST SENTENCE AS OFFERED IN PARA 3 STATE 185830, WITH SUGGESTION THAT "SIGNIFICANCE OF EXPORTS BE CHANGED TO "IMPORTANCE OF EXPORTS" TO REFLECT ACCURATELY THE ROLE OF EXPORTS.

9. SECOND SENTENCE -- ANY COMMITMENT TO FACILITATE THE GRANTING, AS OPPOSED TO THE PROCESSING, OF EXPORT LICENSES IS INCONSISTENT WITH DOMESTIC LAW AND OUR COCOM COMMITMENTS AND THEREFORE CANNOT BE ACCEPTED UNDER ANY CIRCUMSTANCES. AFTER CONSIDERABLE DISCUSSION OF THIS PROVISION, LIMITED OFFICIAL USE
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PAGE 04 STATE 230234

INCLUDING SEVERAL MEETINGS WITH AMBASSADOR BARNES, WE HAVE ARRIVED AT A SERIES OF OPTIONS WHICH REFLECT FINAL U.S. POSITION. WE LIST THEM IN ORDER OF OUR PREFERENCE, PER AMBASSADOR'S REQUEST, LEAVING TO EMBASSY DISCRETION FORM OF PRESENTATION TO GOR. WE DO WISH TO MAKE PERFECTLY CLEAR TO GOR THAT THESE FORMULATIONS DO NOT REPRESENT STARTING POINTS FOR MODIFICATION AND RE-FORMULATION, BUT THAT THEY MUST REMAIN INTACT.

10. OPTION 1 -- "IN LIGHT OF THE ABOVE, EACH PARTY SHALL PROCESS RELEVANT EXPORT LICENSE APPLICATIONS AS EXPEDITIOUSLY AS IS FEASIBLE UNDER ITS ESTABLISHED ADMINISTRATIVE PROCEDURES AND IN CONFORMITY WITH ITS LAWS, REGULATIONS, AND INTERNATIONAL UNDERTAKINGS." THIS IS LANGUAGE OF PARA. 3 STATE 185830 AND WE WOULD LIKE TO TRY IT OUT AGAIN ON GOR AFTER EXPLAINING THAT THEIR ADDED WORDS "AND, SHALL GRANT EXPORT LICENSES" ARE NOT ACCEPTABLE, AND THAT WE WOULD NEED WORDS "AS EXPEDITIOUSLY AS IS FEASIBLE" RATHER THAN "EXPEDITIOUSLY". THIS WOULD APPEAR SIMPLEST COURSE SINCE WE ARE IN AGREEMENT ON MOST OTHER LANGUAGE IN THIS SENTENCE

AND MAY REFLECT GOR CHOICE WHEN IT REALIZES THAT OUR OPPOSITION TO COMMITMENT TO GRANT LICENSES IS FIRM AND FINAL.

11. OPTION 2 -- "IN LIGHT OF THE ABOVE, EACH PARTY SHALL ARRIVE AT EXPORT LICENSING DECISIONS AS EXPEDITIOUSLY AS IS FEASIBLE UNDER ITS ESTABLISHED ADMINISTRATIVE PROCEDURES AND IN CONFORMITY WITH ITS LAWS, REGULATIONS, AND INTERNATIONAL UNDERTAKINGS". THIS REPRESENTS A RE-PHRASING WHICH THE GOR MAY FIND ATTRACTIVE BECAUSE OF COMMITMENT TO ARRIVE AT DECISIONS. WE FEEL IT ADDRESSES THE GOR CONCERNS REFLECTED IN PARA 3 B OF BUCH 4610.

12. OPTION 3 -- IN LIGHT OF THE ABOVE, "EACH PARTY SHALL FACILITATE, WHERE APPROPRIATE, THE REACHING OF EXPORT LICENSING DECISIONS BY PROCESSING SUCH LICENSE APPLICATIONS AS EXPEDITIOUSLY AS IS FEASIBLE UNDER ITS ESTABLISHED ADMINISTRATIVE PROCEDURES AND IN CONFORMITY WITH ITS LAWS, REGULATIONS AND INTERNATIONAL UNDERTAKINGS". WHILE WE ARE SOMEWHAT WARY OF INTRODUCING THE WORD "FACILITATE", WE FEEL IT CAN BE DONE HERE SINCE IT IS PROPERLY DEFINED. IF THE GOR IS INTERESTED IN TRACKING AS CLOSELY AS POSSIBLE THE LIMITED OFFICIAL USE
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PAGE 05 STATE 230234

LANGUAGE OF ARTICLE 7 OF THE AGREED MINUTE OF THE COMMISSIONS'S SECOND SESSION, THIS IS AS FAR AS WE ARE PREPARED TO GO.

13. OPTION 4 -- SAME AS OPTION 3 MINUS THE WORDS "WHERE APPROPRIATE". WE WOULD PREFER TO LEAVE THE ADDED HEDGE "WHERE APPROPRIATE" IN THE PROVISION. HOWEVER, IF OTHER THREE OPTIONS FAIL WE COULD ACCEPT THIS OPTION.

14. REGARDING ALL OPTIONS, WE WISH TO EMPHASIZE AGAIN TO THE GOR THE POSITION EXPRESSED IN THE PENULTIMATE PARAGRAPH OF PARA. 3 STATE 185830 THAT WE HAVE GONE AS FAR AS POSSIBLE ON THIS ISSUE. WE CANNOT OFFER STRONGER LANGUAGE THAN THAT WHICH WE ARE OFFERING HERE AND WE WOULD HOPE THAT GOR OFFICIALS' DESIRE TO HAVE AGREEMENT READY FOR PATAN TO SIGN WOULD BRING THIS EXERCISE TO A HALT BY THEIR ACCEPTANCE OF ONE OF THE FOUR OPTIONS. WE CLEARLY DO NOT ACCEPT GOR POSITION TO HAVE LANGUAGE IN THIS AGREEMENT GO BEYOND THAT EXPRESSED IN ARTICLE 7 OF THE AGREED MINUTES.

15. FOR PURPOSES OF CLARITY EMBASSY MAY WISH TO RUN TOGETHER FIRST AND SECOND SENTENCES AS FOLLOWS: "RECOGNIZING THE IMPORTANCE OF EXPORTS TO THE SUCCESSFUL ACHIEVEMENT OF MUTUALLY ADVANTAGEOUS TRADE AND COOPERATION ACTIVITIES, EACH PARTY SHALL ..."

16. ANNEX I (1C) - ROMANIAN COUNTERPROPOSAL IS COUCHED IN OBSCURE LANGUAGE AND, NATURALLY, AVOIDS ANY SUGGESTION OF

DIRECT HIRING AND COMPENSATION OF EMPLOYEES. WHILE WE DID NOT BELIEVE THAT THE ROMANIANS WOULD ACCEPT OUR INITIAL PROPOSAL, THE LANGUAGE PROPOSED BY THE ROMANIANS DOES OPEN THE DOOR TO THE POSSIBILITY OF INCLUDING LANGUAGE WHICH WOULD RECOGNIZE THAT U.S. FIRMS HAVE A VOICE IN THE HIRING AND COMPENSATION OF EMPLOYEES. EMBASSY SHOULD PROPOSE THE FOLLOWING, STATING THAT THE CHANGES REFLECT OUR DESIRE TO CLARIFY THE LANGUAGE OF THE ROMANIAN PROPOSAL: QUOTE: TO INCLUDE IN THE CONTRACTS OF COOPERATION MEASURES TO FACILITATE HIRING AND COMPENSATION OF NECESSARY LOCAL STAFF

FOR IMPLEMENTATION OF OBLIGATIONS RESULTING FROM COOPERATION PROJECTS. UNQUOTE. PHRASE QUOTE IN ACCORDANCE WITH LIMITED OFFICIAL USE LIMITED OFFICIAL USE

PAGE 06 STATE 230234

LAWS AND REGULATION IN FORCE IN THE TWO COUNTRIES UNQUOTE MERELY REPEATS THE QUALIFIER IN THE SECOND SENTENCE OF THE INITIAL PARAGRAPH AND SHOULD BE DROPPED HERE AS REDUNDANT. HABIB

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